

REMARKS

Claims 1-9 are now pending in the application and stand rejected. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

SPECIFICATION

The specification stands objected to for certain informalities. Applicant has amended the specification in accordance with the Outstanding Office Action. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the objections to the specification.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis (U.S. Pat. No. 5,142,473). This rejection is respectfully traversed.

Davis cannot render Claims 1-9 obvious because, as the Examiner conceded in the Outstanding Office Action, Davis does not teach the limitation that when an operator attempts to start the ignition system when the outboard motor is tilted up beyond a maximum safe tilt position, the alarm (Claims 1 and 2), the ignition disabling switch (Claims 3 and 4), or the tilt circuit (Claims 5 and 6) is activated by the microprocessor to automatically lower the outboard motor. The mere disclosure of a microprocessor in a power boat in Davis does not suggest to a person of ordinary skill that the microprocessor should be or can be easily reprogrammed, as stated in the Office Action, to automatically lower the outboard motor when an operator attempts to start the

ignition system when the outboard motor is titled up beyond a maximum safe tilt position. Davis does not teach or disclose a system that warns or prevents an operator from starting the outboard engine when it is tilted beyond a maximum safe tilt position whatsoever. Rather, Davis teaches a system to achieve a more optimal trim position while the boat is underway for a smoother boat ride.

As MPEP 2143 with the heading “Basic Requirements of a *Prima Facie* Case of Obviousness” admonishes, the motivation must be in the references themselves or in the knowledge generally available to one of ordinary skill in the art, **not in Applicant’s disclosure**. Since the Outstanding Office Action attempts to prove such motivation by the mere assertion that “the motivation is to protect the outboard motor engine from damage and to protect the boat operator or a passenger from the outboard motor propeller,” with no support from Davis or other references, the rejection is focused on hindsight and is improper. Accordingly, Applicant respectfully requests that the rejections of Claims 1-9 be withdrawn.

REJECTION UNDER JUDICIALLY CREATED DOUBLE PATENTING

Claims 7-9 stand rejected under the judicially created doctrine of double patenting as being unpatentable over Claims 3, 8 and 12 of U.S. 6,682,371, respectively. Accordingly, a terminal disclaimer is enclosed with this response, wherein Applicant petitions under 37 CFR 1.321 for a terminal disclaimer and includes a fee as set forth in 37 C.F.R. § 1.17(a). Therefore, the rejections of Claims 7-9 become moot and Applicant respectfully requests that these claim rejections be withdrawn.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (314) 726-7524.

Respectfully submitted,

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